

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

)  
The HipSaver Company, Inc., ) Civil Action No. 05-10917 PBS  
)  
Plaintiff, )  
)  
v )  
)  
J.T. Posey Company, )  
Defendant )  
)  
\_\_\_\_\_  
)

**NOTICE OF ORDER IN RELATED ACTION**

On June 30, 2005, the parallel California Action (CV 05-3705 FMC RJWx) was ordered STAYED by the Honorable Florence-Marie Cooper of the United States District Court for the Central District of California. As shown on the attached order, that matter was stayed pending the outcome of this Court's upcoming July 12, 2005 hearing on J.T. Posey Company's pending motions. As stated by the California Court, "Consistent with the spirit of the first-to-file rule, the Court will wait for the decision of the Massachusetts Court where the first action was filed."

Respectfully submitted,  
THE HIPSAVER COMPANY, INC.  
By its Attorneys,

/s/ Edward J. Dailey  
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Dated: July 5, 2005

**CERTIFICATE OF SERVICE**

I certify that a copy of this document has been forwarded by electronic filing and USPS First Class mail today to Defendant's counsel of record, Anthony J. Fitzpatrick, Esq., DUANE MORRIS LLP, 470 Atlantic Avenue, Boston, Massachusetts 02210 and by USPS First Class mail to Jeffrey G. Sheldon, Esq., SHELDON & MAK, 225 South Lake Avenue, 9<sup>th</sup> Floor, Pasadena, California 91101

Dated: July 5, 2005

/s/ Edward J. Dailey  
Edward J. Dailey

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No. CV 05-3705 FMC(RJWx) Date June 30, 2005

Title J. T. POSEY COMPANY v. HIPSAVER COMPANY, INC.

Present: The  
Honorable FLORENCE-MARIE COOPER

<u>Alicia Mamer</u>	<u>Not present</u>	<u>N/A</u>
<u>Deputy Clerk</u>	<u>Court Reporter / Recorder</u>	<u>Tape No.</u>

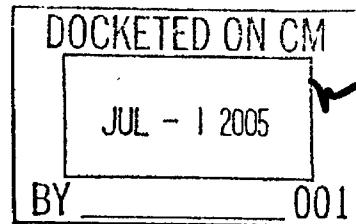
Attorneys Present for Plaintiffs: Not present Attorneys Present for Defendants: Not present

Proceedings: ORDER ON MOTION TO DISMISS, STAY, OR TRANSFER  
(In Chambers)

This matter is before the Court on HipSaver's Motion to Dismiss, Stay, or Transfer, filed on June 7, 2005. On May 4, 2005, HipSaver filed an action against J.T. Posey in the United States District Court, District of Massachusetts. On May 18, 2005, J.T. Posey filed the instant action in this Court. On June 7, 2005, HipSaver filed a Motion to Dismiss, Stay, or Transfer this action under the first-to-file rule. On June 17, 2005, J.T. Posey filed a motion with the Massachusetts Court to transfer the first-filed action to the California Court under U.S.C. §1404(a) based on the convenience of parties and witnesses. J.T. Posey also filed a motion to dismiss HipSaver's complaint or, alternatively, for summary judgment. A hearing on J.T. Posey's motions is set for July 12, 2005.

This matter is STAYED pending the outcome of the July 12, 2005 hearing on Plaintiff J.T. Posey's motions filed in the Massachusetts District Court. Consistent with the spirit of the first-to-file rule, the Court will wait for the decision of the Massachusetts Court where the first action was filed. The Court stays this matter until the Massachusetts Court reaches a decision on Plaintiff's motions.

The Court hereby orders counsel for plaintiff to file a Notice of Ruling and Request to Lift Stay upon a decision by the District of Massachusetts Court.



Initials of Preparer AM

: N/A